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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| OTTER PRODUCTS, LLC,<br><br>Plaintiff,<br><br>v.<br><br>SELL PHONE BASEMENT, LLC, SPECTRE COMPUTERS, LTD., FRANK C. TETRO, each individually and doing business as "KRAYMERICA, LLC", "TECHSAURUS, LTD.", "TECHSAURUS, LLC", and "TECHSAURUS", "JOHN DOES" 1-10; and UNKNOWN ENTITIES 1-10,<br><br>Defendants. | CASE NO. 17-CV-6429<br><br>**COMPLAINT** |

Plaintiff Otter Products, LLC ("Otter Products") through its attorneys complaining of Sell Phone Basement, LLC, Spectre Computers, Ltd., Frank C. Tetro, both individually and doing business as "Kraymerica, LLC", "Techsaurus, Ltd.", "Techsaurus, LLC", and "Techsaurus"; "John Does" 1- 10; and Unknown Entities 1-10 (hereinafter collectively referred to as "Defendants") hereby alleges as follows:

## STATEMENT OF THE CASE

1. This is a suit by Otter Products against Defendants for: (i) counterfeiting and infringement of registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (ii) unfair competition, false designation of origin and false description in violation of

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iii) unlawful importation of goods bearing infringing trademarks in violation of Section 42 of the Lanham Act, 15 U.S.C. § 1124; and (iv) unlawful importation of goods bearing registered United States trademarks in violation of Section 526(a) of the Tariff Act, 19 U.S.C. § 1526(a).

2. This action concerns the illegal importation and distribution of large quantities of merchandise bearing counterfeits and infringements of Otter Products' federally registered trademarks in the United States. As described more fully below, Defendants have conspired knowingly and intentionally to import, distribute, and sell (and/or to aid in the importation, distribution, and sale of) counterfeit merchandise. By doing so, Defendants have willfully infringed Otter Products' valuable trademarks, creating a strong likelihood of confusion among consumers who expect that merchandise bearing Otter Products' trademarks will be genuine Otter Products product and causing both monetary and other irreparable injury to Otter Products.

## JURISDICTION AND VENUE

3. This Court has jurisdiction over the federal trademark claims asserted in this action under 15 U.S.C. § 1121, and 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

4. Defendants are subject to the Court's jurisdiction because they have committed the acts complained of herein in this District and do business in this District.

5. Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with Rule 4 of the Federal Rules of Civil Procedure.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

## PARTIES

7. Plaintiff Otter Products is a corporation duly organized and existing under the laws of the State of Colorado, and having its principal place of business located at 209 S. Meldrum

Street, Fort Collins, CO 80521.

8. Upon information and belief, defendant Frank C. Tetro ("Tetro") is an individual residing at 11 Sonoma Road, Cortlandt Manor, New York 10567.

9. Upon information and belief, defendant Sell Phone Basement, LLC ("Sell Phone Basement") is a limited liability company duly organized and existing under the laws of the State of New York and having its principal place of business located at 3147 East Main St., Suite 859, Mohegan Lake, New York, 10547.

10. Upon information and belief, Tetro maintains a financial interest in and the right and ability to control the business known as Sell Phone Basement.

11. Upon information and belief, defendant Spectre Computers, Ltd. ("Spectre Computers") is a corporation duly organized and existing under the laws of the State of New York and having its principal place of business located at 11 Sonoma Rd., Cortlandt Manor, New York, 10567.

12. Upon information and belief, Tetro is the Chief Executive Officer of Spectre Computers and therefore has the right and ability to control the actions of the corporate defendant.

13. Upon information and belief, Sell Phone Basement, Spectre Computers, and Tetro conduct business under the names "Kraymerica, LLC", "Techsaurus Ltd.", "Techsaurus, LLC", and "Techsaurus" none of which appear to be organized under the laws of any state. The clandestine operations of these non-legal entities is further evidence of Defendants willful conduct.

14. The identities of "John Does" 1-10 and Unknown Entities 1-10 are not currently known to Otter Products. Upon information and belief, they are associated with Defendants and have contributed to Defendants' unlawful activities. Otter Products will use its best efforts to identify these "John Does" and Unknown Entities, and upon further knowledge and investigation, Otter

Products will amend its pleadings accordingly.

## FACTUAL ALLEGATIONS

### A. Otter Products' Famous Products and Trademarks

15. Otter Products began with the entrepreneurial vision of its founder, Curt Richardson. An injection molder by trade, Richardson designed the first "OtterBox" in 1995. The first OtterBox was a durable waterproof box used to keep electronics dry while participating in water sports such as diving or surfing. However, through iterative design changes, what started as a waterproof box evolved into a line of functional, durable, and award-winning personal electronics cases. Today, Otter Products' OtterBox® cases stand as one of the best-selling brands of mobile phone and tablet cases worldwide, with cases for a broad variety personal electronics.

16. For nearly two decades, Otter Products has marked its OtterBox® brand products with a set of trademarks that have come to symbolize a profound company heritage, entrepreneurial spirit, and superior craftsmanship. This reputation started with the design of the first OtterBox® in 1995, and has since expanded into a robust global marketplace. From its prescient inception to its products' establishment as a household name, Otter Products has expended great amounts of time, money, and effort advertising and promoting its OtterBox® trademarks globally, including throughout the United States and in this District. As a result of these investments and its widespread success, Otter Products has developed considerable goodwill and a reputation for the highest quality products. Otter Products has continuously used its trademarks to distinguish its OtterBox® products and uphold this reputation.

17. Otter Products is the owner of various trademarks registered with the United States Patent and Trademark Office ("USPTO") and has filed copies of and recorded the certificates of registration for many of these trademarks with the Secretary of the United States Bureau of Customs and Border Protection ("Customs") in accordance with Section 526(a) of the Tariff

Act, 19 U.S.C. § 1526(a), and Section 42 of the Lanham Act, 15 U.S.C. § 1124. Such trademarks include, but are not limited to the following, among others:

| Trademark | USPTO Registration Number | Registration Date | Goods |
|---|---|---|---|
| OTTER BOX | 2287619 | 10/19/1999 | IC 028. US 022 023 038 050. G & S: non-metal, water-tight containers for outdoors recreational use. |
| OTTER BOX | 3788535 | 05/11/2010 | IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers. |
| OTTERBOX | 4509483 | 04/08/2014 | IC 042. US 100 101. G & S: Providing a website featuring news and commentary in the field of mobile technology. |
| OTTERBOX | 4602221 | 09/09/2014 | IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, portable media players, tablets, personal digital assistants, e-book readers, and computers; protective covers and cases for computers. |
| OTTERBOX | 4451386 | 12/17/2013 | IC 035. US 100 101 102. G & S: On-line retail store services featuring protective covers and cases for personal |

| | | | |
|---|---|---|---|
| | | | electronic devices, namely, cell phones, portable media players, tablets, e-book readers, and computers. |
| DEFENDER SERIES | 4616874 | 10/07/2014 | IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for personal electronic devices, namely, cell phones. |
| DEFENDER SERIES | 3623789 | 05/19/2009 | IC 009. US 021 023 026 036 038. G & S: Protective cases for interactive, handheld electronic devices, namely, portable music players, portable video players and tablet computers. |
| | 3791318 | 05/18/2010 | IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers. |
| | 4293603 | 02/19/2013 | IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers. |

| | | | |
|---|---|---|---|
| COMMUTER | 3791317 | 05/18/2010 | IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers. |
| COMMUTER SERIES | 3963182 | 05/17/2011 | IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, multifunctional mobile phones, portable music players, portable video players and computers. |

(hereinafter collectively referred to as the "Otter Products Registered Trademarks").

18. The Otter Products Registered Trademarks are valid, in full force and effect, protectable and exclusively owned by Otter Products. Otter Products has continuously used the Otter Products Registered Trademarks during all time periods relevant to Otter Products' claims. As a result, the Otter Products Registered Trademarks have become incontestable pursuant to 15 U.S.C. § 1065.

19. The Otter Products Registered Trademarks have been used regularly in interstate commerce, including within this District, to identify and distinguish Otter Products' high quality merchandise including, but not limited to, water resistant mobile phone cases, water resistant tablet cases, shock resistant mobile phone cases, shock resistant tablet cases, drop resistant mobile phone cases, drop resistant tablet cases, mobile phone accessories, tablet accessories, and other goods.

20. Due to the overwhelming amount of resources exhausted by Otter Products in order to create, protect, enforce, and promote the Otter Products Registered Trademarks, the Otter

Products Registered Trademarks have achieved secondary meaning as identifiers of high quality merchandise including, but not limited to, water resistant mobile phone cases, water resistant tablet cases, shock resistant mobile phone cases, shock resistant tablet cases, drop resistant mobile phone cases, drop resistant tablet cases, mobile phone accessories, tablet accessories, and other goods.

21. The Otter Products Registered Trademarks are recognized around the world and throughout the United States by consumers as signifying authentic, high quality OtterBox® products. As such, the Otter Products Registered Trademarks qualify as famous marks as the term is used in 15 U.S.C. § 1125(c)(1) and achieved such fame prior to Defendants' conduct that is the subject of this Complaint.

**B. Defendants' Illegal Activities**

22. Upon information and belief, Defendants are importing, distributing, and using in interstate commerce merchandise bearing counterfeits and infringements of the Otter Products Registered Trademarks.

23. Defendants are willful infringers who have been put on notice of their illegal activity by cease and desist letters and several seizures of product by Customs. Despite having notice, Defendants continue to infringe the Otter Products Registered Trademarks causing irrespirable harm to Otter Products and the unsuspecting public who are being defrauded into purchasing illegal merchandise.

24. As part of their ongoing illegal enterprise, Defendants import into the United States and then sell merchandise bearing counterfeits and infringements of the Otter Products Registered Trademarks. As detailed below, the history of Defendants' illegal activities is extensive.

25. Customs periodically conducts inspections of merchandise imported into the United States. Pursuant to one such inspection, on or about March 16, 2015, Customs provided Otter

Products with a Notice of Seizure of Infringing Merchandise (No. 2015-4772-000185) ("First Seizure") identifying "Techsaurus", located at 11 Sonoma Rd. Cortland [sic] Manor, New York 10567, as the importer of record of one hundred twenty-six (126) "Ipad Cases" imported into the JFK Airport in Jamaica, New York on or about November 25, 2014.

26. Upon information and belief, Defendants, specifically under the direction of its CEO and/or alter ego, Tetro, arranged for and imported the shipments referenced in the First Seizure.

27. Despite the First Seizure, Defendants' illegal activities and willful infringement of the Otter Products Registered Trademarks continued.

28. On or about April 14, 2015, Otter Products sent a cease and desist letter to Defendants (the "First Cease and Desist Letter"), warning them of the consequences of their illegal activity concerning the Otter Products Registered Trademarks and to cease such activity immediately. Otter Products never received a response to the First Cease and Desist Letter.

29. Despite the First Seizure and the First Cease and Desist Letter, Defendants' illegal activities and willful infringement of the Otter Products Registered Trademarks continued.

30. On or about June 16, 2015, Customs provided Otter Products with another Notice of Seizure of Infringing Merchandise (No. 2015-4772-00212801) ("Second Seizure") identifying "Tech Saurus", located at 11 Sonoma Rd. Cortland [sic] Manor, New York 10567, as the importer of record of eighty (80) "OtterBox Cases For Galaxy S4" imported into the JFK Airport in Jamaica, New York on or about May 26, 2015.

31. Upon information and belief, Defendants, specifically under the direction of its CEO and/or alter ego, Tetro, arranged for and imported the shipments referenced in the Second Seizure.

32. Despite the First Seizure, the First Cease and Desist Letter, and the Second Seizure, Defendants' illegal activities and willful infringement of the Otter Products Registered

Trademarks continued.

33. On or about April 25, 2016, Customs provided Otter Products with another Notice of Seizure of Infringing Merchandise (No. 2016-4772-00162801) ("Third Seizure") identifying "Techsaurus LLC", located at 420 South Riverside Ave., Apt. 249, Croton on the Hudson, New York 10520, as the importer of record of forty (40) "Otter Defenders" imported into the JFK Airport in Jamaica, New York on or about January 16, 2016.

34. Upon information and belief, Defendants, specifically under the direction of its CEO and/or alter ego, Tetro, arranged for and imported the shipments referenced in the Third Seizure.

35. Despite the First Seizure, the First Cease and Desist Letter, the Second Seizure, and the Third Seizure, Defendants' illegal activities and willful infringement of the Otter Products Registered Trademarks continued.

36. On or about November 3, 2016, Otter Products sent a second cease and desist letter to Defendants (the "Second Cease and Desist Letter"), warning them again of the consequences of their illegal activity concerning the Otter Products Registered Trademarks and to again cease such activity immediately.

37. Despite the First Seizure, the First Cease and Desist Letter, the Second Seizure, the Third Seizure, and the Second Cease and Desist Letter, Defendants' illegal activities and willful infringement of the Otter Products Registered Trademarks continued.

38. On or about March 28, 2017, Customs provided Otter Products with another Notice of Seizure of Infringing Merchandise (No. 2017-4772-00100501 RFM) ("Fourth Seizure") identifying "TECHSAURUS", located at 1532 Jacob Rd., Yorktown Heights, NY 10598, as the importer of record of forty (40) "Otter Defenders" imported into the JFK Airport in Jamaica, New York on or about March 9, 2017.

39. Upon information and belief, Defendants, specifically under the direction of its CEO

and/or alter ego, Tetro, arranged for and imported the shipments referenced in the Fourth Seizure.

40. Despite the First Seizure, the First Cease and Desist Letter, the Second Seizure, the Third Seizure, the Second Cease and Desist Letter, and the Fourth Seizure, Defendants' illegal activities and willful infringement of the Otter Products Registered Trademarks continued.

41. On or about August 1, 2017, Customs provided Otter Products with another Notice of Seizure of Infringing Merchandise (No. 2017-4772-00222901 RFM) ("Fifth Seizure") identifying "Kraymerica Joseph King", located at 11 Sonoma Rd. Cortland [sic] Manor, New York 10567, as the importer of record of one hundred 100 "Otterbox Phone Cases" imported into the JFK Airport in Jamaica, New York on or about July 5, 2017.

42. Upon information and belief, Defendants, specifically under the direction of its CEO and/or alter ego, Tetro, arranged for and imported the shipments referenced in the Fifth Seizure.

43. During this time period, not only were Defendants illegally importing counterfeit merchandise but selling such merchandise as well.

44. Between April 4, 2015 and February 16, 2017, Otter Products conducted five (5) separate transactions with Defendants to obtain samples of their counterfeit merchandise. Otter Products received the products purchased and confirmed that they were not authentic Otter Products merchandise and did, in fact, bear counterfeits and infringements of the Otter Products Registered Trademarks. These purchases can be broken down as follows:

| **Date of Purchase** | **Marketplace of Purchase** | **Identity of Seller** |
|---|---|---|
| 04/06/2015 | Rakuten.com | "techsaurus llc" |
| 10/18/2016 | eBay.com | "techsaurus" |
| 12/05/2016 | eBay.com | "Ihold450" |

| | | |
|---|---|---|
| 02/16/2017 | Walmart.com | "Spectre LTD" |
| 02/16/2017 | Walmart.com | Sell Phone Basement LLC |

45. Defendants' importation and sale of the counterfeit merchandise into the United States constitutes an illegal use in commerce of the Otter Products Registered Trademarks in connection with the sale, offering for sale, or distribution of the counterfeit merchandise.

46. Upon information and belief, counterfeiters, like Defendants, routinely import counterfeit goods and are rarely caught by Customs. Therefore, the full extent of Defendants' importation, distribution, and other infringement of the Otter Products Registered Trademarks is not yet known. The four (4) seizures by Customs and the five (5) purchases by Otter Products are merely the tip of the iceberg of Defendants' illegal activities.

47. Upon information and belief, Defendants are engaged in and/or have otherwise been involved in facilitating the commercial importation of the counterfeit merchandise into the United States and, in doing so, Defendants are intentionally and knowingly using the counterfeit marks in connection with the sale, offering for sale, or distribution of goods.

48. The counterfeit merchandise imported into the United States was not manufactured, authorized, or sponsored by Otter Products. Thus, consumers will be confused and disappointed by the differences between the counterfeit merchandise imported by Defendants and the genuine Otter Products merchandise manufactured and sold by Otter Products or its affiliates.

49. As a result of Defendants' actions, Otter Products is losing profits from lost sales of genuine product, is suffering a loss of enormous goodwill created in its Otter Products Registered Trademarks, and will continue to suffer such loss if Defendants are allowed to continue their illegal activity.

50. Upon information and belief, Defendants have knowingly and willfully engaged in their

illicit activities in direct violation of Otter Products' rights and/or have shown a blatant disregard for the same. For these reasons, this qualifies as an exceptional case under 15 U.S.C. § 1117(a).

51. Otter Products has suffered irreparable injury as a direct and proximate result of Defendants' wrongful importation and distribution of the counterfeit merchandise.

52. Otter Products has no adequate remedy at law.

53. Defendants' unlawful acts will undoubtedly persist without judicial intervention. As such, Defendants must be restrained and enjoined from further violating Otter Products' well-established rights in and to the Otter Products Registered Trademarks.

**FIRST CLAIM FOR RELIEF**
**(Trademark Counterfeiting, 15 U.S.C. § 1114)**

54. Otter Products hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 53.

55. Defendants have knowingly, intentionally, and without the consent of Otter Products used in commerce reproductions, counterfeits, and/or copies of the Otter Products Registered Trademarks in connection with the importation, sale, offering for sale, distribution, or advertising of goods covered by USPTO registrations for the Otter Products Registered Trademarks. Such use is likely to: cause confusion or mistake or deceive consumers; cause consumers to believe Defendants' counterfeit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Otter Products despite the fact that it is not.

56. Defendants' use of the counterfeit marks was willful and done with the knowledge that the marks are counterfeit, and as such, Defendants' acts constitute willful trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

57. Defendants' acts constitute use in commerce of the Otter Products Registered Trademarks.

58. For the aforementioned reasons, Otter Products is entitled to: (a) damages for all of Defendants' profits derived from their unlawful conduct and/or Otter Products' lost profits from sales of genuine goods due to Defendants' conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. § 1117(a)-(b), or alternatively, statutory damages in the amount of up to $2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c) of the Lanham Act; and (b) reasonable attorneys' fees, investigative fees and pre-judgment interest according to 15 U.S.C. § 1117(b).

59. Otter Products has no adequate remedy at law for Defendants' ongoing wrongful conduct. Otter Products has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

## SECOND CLAIM FOR RELIEF
## (Trademark Infringement, 15 U.S.C. §1114)

60. Otter Products hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 59.

61. Defendants have knowingly, intentionally, and without the consent of Otter Products used in commerce reproductions, counterfeits, and/or copies of the Otter Products Registered Trademarks in connection with the importation, sale, offering for sale, distribution, or advertising of goods covered by USPTO registrations for the Otter Products Registered Trademarks. Such use is likely to: cause confusion or mistake or deceive consumers; cause consumers to believe Defendants' counterfeit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Otter Products despite the fact that it is not.

62. Defendants' use of the infringing marks was willful and done with the knowledge that the marks are infringing, and as such, Defendants' acts constitute willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

63. Defendants' acts constitute use in commerce of the Otter Products Registered Trademarks.

64. For the aforementioned reasons, Otter Products is entitled to: (a) damages for all of Defendants' profits derived from their unlawful conduct and/or Otter Products' lost profits from sales of genuine goods due to Defendants' conduct to the full extent provided under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a); and (b) reasonable attorneys' fees, investigative fees and pre-judgment interest according to 15 U.S.C. § 1117(b).

65. Otter Products has no adequate remedy at law for Defendants' ongoing wrongful conduct. Otter Products has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

## THIRD CLAIM FOR RELIEF
**(Unfair Competition, False Designation of Origin & False Description, 15 U.S.C. §1125(a))**

66. Otter Products hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 65.

67. Defendants importation, sale, offering for sale, distribution, or advertising of goods bearing the Otter Products Registered Trademarks constitutes use in commerce of false designations of origin and false and misleading descriptions and representations that Defendants' counterfeit merchandise is affiliated with, sponsored by, authorized or approved by, or is otherwise associated with Otter Products despite the fact that it is not. As a result of Defendants' unauthorized use of the Otter Products Registered Trademarks, the public is likely to be misled and confused as to the source, sponsorship, or affiliation of Defendants' counterfeit

merchandise.

68. Defendants' importation, sale, offering for sale, distribution, or advertising of goods bearing the Otter Products Registered Trademarks constitutes unfair competition as it is intended to cause confusion and deceive consumers and trades upon the established reputation and goodwill of Otter Products.

69. Defendants' conduct is willful, intended to reap the benefit of Otter Products' established goodwill, and violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), all to the severe detriment of Otter Products.

70. Defendants' acts entitle Otter Products to damages for all of Defendants' profits derived from their past unlawful conduct and/or for all of Otter Products' lost profits from lost sales of genuine goods due to Defendants' conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. §1117(a)-(b), or in the alternative to statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. §1117(c).

71. Otter Products has no adequate remedy at law for Defendants' ongoing wrongful conduct. Otter Products has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

## FOURTH CLAIM FOR RELIEF

**(Unlawful Importation of Goods Bearing Infringing Marks in Violation of Section 42 of the Lanham Act, 15 U.S.C. §1124)**

72. Otter Products hereby realleges and incorporates by reference all prior allegations as set forth in Paragraphs 1 through 71.

73. Defendants' acts alleged herein constitute the importation of merchandise which bears copies or simulations of the federally registered Otter Products Registered Trademarks in violation of Section 42 of the Lanham Act, 15 U.S.C. §1124.

74. Defendants' use of the infringing marks was willful, intentional, and done with the knowledge that the marks are counterfeit marks, as defined in Section 34(d) of the Lanham Act, 15 U.S.C. §1116(d).

75. Defendants' acts entitle Otter Products to damages for all of Defendants' profits derived from their past unlawful conduct and/or for all of Otter Products' lost profits from lost sales of genuine goods due to Defendants' conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. §1117(a)-(b), or in the alternative to statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. §1117(c).

76. Otter Products has no adequate remedy at law for Defendants' ongoing wrongful conduct. Otter Products has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

## FIFTH CLAIM FOR RELIEF

**(Unlawful Importation of Goods Bearing Registered United States Trademarks in Violation of Section 526(a) of the Tariff Act, 19 U.S.C. §1526(a))**

77. Otter Products hereby incorporates by reference all prior allegations as set forth in Paragraphs 1 through 76.

78. Defendants' acts alleged herein constitute the importation of merchandise which bears imitations of the Otter Products Registered Trademarks without Otter Products' consent, in violation of Section 526(a) of the Tariff Act, 19 U.S.C. §1526(a).

79. Defendants' use of the infringing marks was willful, intentional, and done with the knowledge that the marks are counterfeit marks, as defined in Section 34(d) of the Lanham Act, 15 U.S.C. §1116(d).

80. Defendants' acts entitle Otter Products to damages for all of Defendants' profits derived from their past unlawful conduct and/or for all of Otter Products' lost profits from lost sales of

genuine goods due to Defendants' conduct, trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. §1117(a)-(b), or in the alternative to statutory damages under Section 35(c) of the Lanham Act, 15 U.S.C. §1117(c).

81. Otter Products has no adequate remedy at law for Defendants' ongoing wrongful conduct. Otter Products has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' actions.

## PRAYER FOR RELIEF

**WHEREFORE,** Otter Products respectfully requests that the Court order the following relief:

I. That the Court enter an injunction ordering that Defendants, their agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from:

a) using any counterfeit or infringement of the Otter Products Registered Trademarks to identify any goods not authorized by Otter Products;

b) counterfeiting or infringing the Otter Products Registered Trademarks by importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying any products bearing any simulation, reproduction, counterfeit, or copy of the Otter Products Registered Trademarks;

c) using any simulation, reproduction, counterfeit, or copy of the Otter Products Registered Trademarks in connection with the importation, promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Otter Products, or to any goods sold, manufactured, sponsored or approved by, or connected with Otter Products,

d) making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Defendants are in any way associated or connected with Otter Products;

e) engaging in any other conduct constituting an infringement of the Otter Products Registered Trademarks, of Otter Products' rights in, or to use or to exploit, said trademark, or constituting any weakening of Otter Products' name, reputation and goodwill.

II. That Defendants be required to deliver to Otter Products for destruction all unauthorized materials bearing any of the Otter Products Registered Trademarks in association with unauthorized goods and the means for production of same pursuant to 15 U.S.C. § 1118.

III. Requiring Defendants to pay to Otter Products such damages for all of Defendants' profits derived from their unlawful conduct and/or Otter Products' lost profits from sales of genuine goods due to Defendants' infringement, counterfeiting, false designation of origin, unfair competition, unlawful importation under 15 U.S.C. §1124, and unlawful importation under 19 U.S.C. §1526(a), trebled, to the full extent provided under Sections 35(a) and 35(b) of the Lanham Act, 15 U.S.C. § 1117(a)-(b), or alternatively, statutory damages in the amount of up to $2,000,000 for each mark counterfeited as provided by 15 U.S.C. § 1117(c) of the Lanham Act.

IV. Ordering that Defendants compensate Otter Products for the costs of this action, reasonable attorneys' fees, investigative fees and pre-judgment interest according to 15 U.S.C. § 1117(b).

V. Directing that this Court retain jurisdiction of this action for the purpose of enabling Otter Products to apply to the Court at any time for such further orders and interpretation or execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith and for the punishment of any violations thereof.

VI. Ordering that pursuant to 11 U.S.C. § 523(a)(6), Defendants be prohibited from a discharge under 11 U.S.C. § 727 for malicious, willful and fraudulent injury to Otter Products

VII. Awarding to Otter Products such other and further relief as the Court may deem just and proper, together with the costs and disbursements that Otter Products has incurred in connection with this action.

**MORRISON & LEE LLP**

Dated: August 23, 2017

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